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Supplier and Distributor Laws Frequently Asked Questions

Aid and Assistance

Can a retailer licensee purchase barware (defined in MCL 436.1609(11)) from a licensed wholesaler and/or a licensed supplier?

Generally, no. However, MCL 436.1609(5) provides a limited exception permitting a retailer to possess and use brand-logoed barware that advertises spirits if the items are purchased from a manufacturer of spirits, vendor of spirits, salesperson, broker, or barware retailer. A retailer can possess and use brand-logoed barware that advertises beer or wine if the items are purchased from a barware retailer. MCL 436.1609(5). A manufacturer, outstate seller, or vendor of spirits may provide brand-logoed merchandise to a retailer to promote the brand and price of its products subject to the requirements of MCL 436.1609(6).

Can a wholesaler, manufacturer, or supplier etch glassware for a licensed retailer or a customer at the licensed retailer's premises?

No. Etching glassware for a licensed retailer or its customers on the licensed premises provides value to the retailer and is thus prohibited under MCL 436.1609.

Can a wholesaler sell a beer or wine product at a different price to different retailers? For example, can a distributor sell an item at a different price to chain stores versus independent stores? Or can a distributor sell an item at different prices to on-premises bars and restaurants versus off-premises stores?

No. MCL 436.1609a and Mich Admin Code, R 436.1726 require that a wholesaler sell a particular beer or wine product at the same price to each retail customer.

Product Allocation and "Private" Labels

Can a supplier or distributor allocate products to their respective customers in any manner they choose?

No. If a product has limited availability and demand exceeds supply, a supplier or wholesaler must allocate in an equitable manner to ensure that the product is reasonably available to all customers that place an order. Failure to do so would constitute providing a thing of value to the favored customers and violate MCL 436.1609.

Can a wholesaler or supplier limit the availability of a private label brand to the retailer associated with the private label?

No. In general, a private label brand refers to products manufactured for a third party that then sells them as its own brand of product to other businesses or to consumers. A wholesaler of a private label brand is required to equitably allocate the product so as to make it reasonably available to all retailers that place an order. Failure to do so would constitute providing a thing of value to the favored customers and violate MCL 436.1609.

Can a retailer that has a private label control or direct the appointment of the wholesaler of the private label product?

No. Michigan law requires the supplier to grant exclusive sales territories to one or more distributors of its brands. See MCL 436.1307, MCL 436.1401, and MCL 436.1403. The Code does not permit a retailer to control or direct the supplier's appointment or termination of a wholesaler.

Fees

Can a person selling alcoholic liquor in the manufacturer or wholesaler tiers charge and receive compensation from another licensee in the form of a charge or fee or something in addition to the price of the alcoholic beverage product, such as a marketing fee, a slotting fee, a delivery fee, a fuel surcharge fee, a non-compliance fee, etc.?

No. MCL 436.1609 states that a manufacturer or a wholesaler "shall not aid or assist any other vendor by gift, loan of money or property of any description or other valuable thing ...", except for goods and services that are expressly permitted by the statute or items that were approved by the Commission by rules or orders adopted prior to January 1, 2014. This statute prohibits any manufacturer or wholesaler from charging (or receiving money from) another for incidental activities related to selling alcoholic beverages where the charge or fee is for anything beyond the cost of the goods sold to the other. If the manufacturer or wholesaler wishes to be reimbursed for expenses it incurs in conducting its business those charges and fees must be incorporated into the price of the alcoholic products being sold and cannot be imposed as a separate or additional charge, fee, or penalty.

Indemnification and Additional Insureds

Can a manufacturer, supplier, or wholesaler indemnify a vendor or add them as an additional insured?

No. This would violate MCL 436.1609 as each constitutes an “other valuable thing.” These issues were addressed in the Michigan Liquor Control Commission’s March 2, 1994, and March 4, 2009, Declaratory Rulings.

Distributor Independence

Can a supplier require a wholesaler to provide financial records such as total sales revenue or employee compensation?

No. MCL 436.1608(3)(a) generally prohibits a supplier from requiring a wholesaler to provide financial records directly or indirectly related to (i) the wholesaler’s distribution of the brands manufactured or sold to the wholesaler by another manufacturer, (ii) the compensation of a wholesaler’s employees, or (iii) the wholesaler’s business operations not directly related to the distribution of the brands manufactured or sold to the wholesaler by the manufacturer. Additionally, a supplier cannot require a wholesaler to submit financial records as a requirement for renewing or retaining an agreement or require a wholesaler to spend a set amount of resources marketing or promoting the supplier’s brands based on the sales revenue derived by the wholesaler’s distribution of the supplier’s brands. MCL 436.1608(3)(b) and (c).

Can a supplier ship beer, wine, or mixed spirit drink to a wholesaler that the wholesaler did not order or forecast?

No. MCL 436.1608(3)(d) prohibits a supplier from intentionally shipping product to a distributor that the distributor did not order or that exceeds the amount ordered. However, if a distributor and supplier have an agreed forecasting model that calls for specific brands and volumes of product to be shipped within a designated period of time, the amount of the product included in an individual shipment may vary as long as the total amount and type of product shipped in the designated period of time does not exceed the forecasted amount.

Can a supplier set or attempt to set compensation rates for wholesaler employees?

No, MCL 436.1608 prohibits a supplier from setting or attempting to set compensation rates for wholesaler employees, including incentives. In addition, MCL 436.1603(1)) prohibits a supplier from having any direct or indirect financial interest in the establishment, operation, maintenance, or promotion of the business of any other vendor.

Non-Alcoholic Beverages

I distribute non-alcoholic beverages and products to both licensed and unlicensed retailers in Michigan. I also hold a Michigan wholesaler license. Do the rules prohibiting aid and assistance, quantity discounts, and credit sales apply to the

sale of my non-alcoholic products (e.g. soft drinks, water, chips, etc.) to licensed retailers?

Yes. The MLCC, through the Michigan Liquor Control Code and its associated rules and regulations, regulates the sale, transportation and distribution of alcoholic beverages and certain aspects of the relationships and transactions between licensees. Therefore, as a licensed distributor you must follow all the statutory and administrative rules and regulations dealing with the sale of alcoholic beverages and the relationships between licensees. As a licensed wholesaler, you are prohibited by MCL 436.1609 from providing any “other valuable thing” to another vendor, including a licensed retailer, and the vendor is prohibited from accepting the same. The term “other valuable thing” is defined in MCL 436.1609(11)(e) to mean “a good, service, or intangible good that is given, loaned, leased, or sold to another licensee that has value regardless of whether the value is nominal.” As a wholesaler, you are therefore prohibited from providing any form of “aid and assistance” to a licensed retailer including in the context of selling non-alcoholic beverages or products to the licensed retailer.

Exclusive Territories

Can a supplier appoint one wholesaler to service on-premises licensed retailers and another wholesaler to service off-premises licensed retailers in the same territory for beer, wine, or mixed spirit drink?

No. MCL 436.1401 and MCL 436.1307 require a supplier to designate one wholesaler for each sales territory to sell a specified brand or brands of beer, wine, or mixed spirit drink

Anti-Tied House/Financial Interest

Can a licensed wholesaler participate or assist in the manufacturing process, for example, by providing ingredients or a proprietary recipe of alcoholic liquor, whether the activity takes place in this state or not, with a supplier that holds a license in Michigan?

No. This activity would violate the prohibition against a supplier, warehouser, or wholesaler from having a direct or indirect financial interest in the establishment, maintenance, operation, or promotion of another vendor's business under MCL 436.1603(1). Additionally, this activity would be prohibited under MCL 436.1609 as it would constitute providing a thing of value to another vendor.